



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 07/19/05
AGENDA ITEM 7
WORK SESSION ITEM _____

TO: Redevelopment Agency Board
FROM: Director of Community and Economic Development
SUBJECT: Adoption of Resolution of Necessity to Acquire a Portion of 199 C Street
(APN 431-0024-010-08)

RECOMMENDATION:

It is recommended that the Redevelopment Agency adopt the attached Resolution of Necessity to acquire a portion of 199 C Street.

BACKGROUND:

The parcel at 199 C Street is owned by Libitzky Holdings, L.P. The entire property is approximately 9.45 acres, and is improved with an approximately 226,140 sq. ft. industrial warehouse building and an approximately 95,400 sq. ft. improved, fenced parking lot and truck loading area, containing approximately 110 parking spaces. This property was formerly part of the Hunts-Wesson Cannery, but was sold to Libitzky Holdings in 1990. The property is currently leased to two tenants, and has a use permit which expires in 2010.

The property is located in the Downtown Hayward Redevelopment Project area, and is also within the boundaries of the Cannery Area Design Plan. The Design Plan calls for a new school to be built on property just north of the Libitzky property, and for a road to be installed between the new school and the property to the south. As a result, a portion of the Libitzky property's parking lot is needed for road right of way. The remainder of the Libitzky property as well as the other former Cannery properties are planned and zoned for a mix of higher density housing.

The Hayward Redevelopment Agency, the Hayward Unified School District (HUSD), and the Hayward Area Recreation District (HARD) have been working to implement the public facilities portion of the Cannery Design Plan since 2002. The roadways surrounding the expanded school and park site have been designed and a contract has been let for the roadway construction work, which is scheduled to take place in phases. In addition, the proposed new school is under design, the expanded park master plan is under review, and most of the property needed for the school site itself has been acquired. Remaining rights of way needed for the park, school and roadway will come from the two industrial property owners to the south of the current school and park: Citation Homes Central and Libitzky Holdings.

The right of way that is needed from Libitzky Holdings is a 56 foot strip of the fenced parking area at the north end of the property, including the removal of an estimated 46 parking spaces and the masonry wall at that end of the property. Also included within this 56 foot strip at the northeast corner of the property is a sliver of the Sulfur Creek drainage channel that is proposed to be covered. The total area proposed to be acquired is measured at 26,332 square feet. Approximately 5,000 square feet of the area proposed for acquisition is subject to an access easement in favor of Citation Homes.

The Agency commissioned an appraisal of the Libitzky property in October 2004, and subsequently made an offer to Mr. Moses Libitzky in February 2005 to purchase the property in the amount of \$351,000. Mr. Libitzky responded that he did not agree with the valuation and the methodology used to establish value, and that in addition the Agency will need to replace or otherwise compensate for the parking lost to his tenant, and to compensate Mr. Libitzky for the loss of access to easement rights that he has over the neighboring Citation property.

The Agency has subsequently worked with both Mr. Libitzky, his tenant and the tenant on the Citation property to attempt to come up with a replacement parking scheme that allows both tenants to continue to operate, however, this scheme does not provide full replacement of the area lost. With respect to value, Mr. Libitzky recently responded with a verbal counter-offer to sell the property which is not within an acceptable range of the value established by the Agency's appraisal. Therefore, staff recommends that at this time the Agency Board hold a hearing to consider approving a resolution of necessity to authorize commencement of proceedings to acquire the property by eminent domain.

A two-thirds vote of the Agency Board is required to approve this action, pursuant to the Code of Civil Procedure. While public testimony is not restricted at the hearing, only the following items are required to be considered:


1. the public interest and necessity require the proposed project;
2. the proposed project is planned or located in a manner that will be most compatible with the greatest public good and least private injury;
3. the real property identified on Exhibit is necessary for the proposed project; and
4. the offer required by the Government Code has been made to the owner of record.

Although this action is being recommended at this time, it may be possible to settle this matter outside of court, and staff will continue to work with the property owner to attempt to reach such a settlement. To assist in this regard, staff will obtain an update to its existing appraisal, and if warranted will adjust its offer to the property owner. In the meantime staff is recommending approval of an appropriation of \$351,000 for the purpose of acquiring the property. A notice of the hearing was sent by first class mail to the property owner.

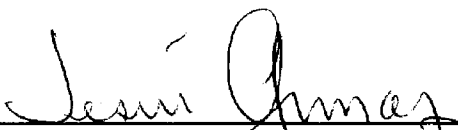
Prepared by:


Maret Bartlett, Redevelopment Director

Recommended by:


Sylvia Ehrental, Director of Community
and Economic Development

Approved by:


Jesús Armas, City Manager

Exhibits: Exhibit A – Site Map
 Resolutions

(10-8)
(2.2845.2)
5.4722.2
SEE ALK. PG FOR REMAINING PORTION

DRAFT

REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD

RESOLUTION NO. RA_05-_____

Introduced by Agency Member _____

mae
7/14/05

RESOLUTION OF NECESSITY DECLARING A PUBLIC NEED FOR AND AUTHORIZING THE ACQUISITION AND IMMEDIATE POSSESSION BY EMINENT DOMAIN PROCEEDINGS OR OTHERWISE A PORTION OF REAL PROPERTY LOCATED AT 199 C STREET IN FURTHERANCE OF THE CANNERY AREA DESIGN PLAN

WHEREAS, the Redevelopment Agency of the City of Hayward is interested in acquiring 26,332 square feet of the property located at 199 C Street (APN 431-0024-010-08), owned by Libitzky Holdings, L.P (Owner), for purposes of constructing a roadway to serve the proposed school, as contemplated by the Cannery Area Design Plan; and

WHEREAS, the property is approximately 9.45 acres, and is improved with a 226,140 square foot industrial warehouse building and 95,400 square foot improved, fenced parking lot and truck loading area, and currently leased to two tenants; and

WHEREAS, the property is within the boundaries of the Downtown Hayward Redevelopment Project and the Cannery Area Design Plan, which calls for a new school to be built on the property just north of the Libitzky property and for a road to be installed between the new school and the property to the south; a portion of the Libitzky property is needed for road right of way and the remainder of the property is planned and zoned for a mix of higher density housing; and

WHEREAS, the City Council of the City of Hayward has previously considered the environmental impacts of the Cannery Area Design Plan, including the proposed school and roadway, in the program Environmental Impact Report certified in 2001; and

WHEREAS, the Agency commissioned an appraisal of the property in October 2004 and made an offer to purchase the property for \$351,000 to the Owner in February 2005, which Owner rejected and made a counteroffer that was not within an acceptable range of the value established by the Agency's appraisal; and

WHEREAS, staff is recommending that the Agency Board hold a hearing to consider approving a resolution of necessity to authorize commencement of proceedings to acquire the property by eminent domain; and

WHEREAS, the Redevelopment Agency has complied with the provisions of section 1245.235 of the Code of Civil Procedure of the State of California, including, but not limited to, a public hearing held on July 19, 2005, on the matters referred to in section 1240.230 of said code, prior notice of which was provided to Mr. Libitzky, the owner of the subject property; and

WHEREAS, the Redevelopment Agency is authorized to acquire real property by eminent domain by the Downtown Hayward Redevelopment Plan and the Constitution and statutes of the State of California, including, but not limited to, Health and Safety Code sections 33342 and 33367.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Redevelopment Agency of the City of Hayward that it hereby finds, determines, and declares as follows:

1. That the public interest, convenience, and necessity require the acquisition by the Redevelopment Agency of the Property described in Appendix 1, attached to this Resolution, for the development of the proposed roadway identified in the Cannery Area Design Plan, which furthers the goals and objectives of the Downtown Hayward Redevelopment Plan;
2. That the public interest, convenience, and necessity require that a fee simple estate be taken by the Redevelopment Agency in and to said Property or related interests in real property;
3. That the proposed roadway is planned and located in the manner which will be most compatible with the greatest public good and the least private injury;
4. That the Redevelopment Agency's staff has made the offer required by section 7267.2 of the Government Code of the State of California to Mr. Libitsky, the property owner, prior to the public hearing held on July 19, 2005, regarding the adoption of this resolution of necessity.

BE IT FURTHER RESOLVED that the Redevelopment Agency shall acquire the Property for construction of the proposed roadway; and

BE IT ALSO RESOLVED that the Agency's General Counsel is authorized and directed to take any and all lawful actions which are convenient or necessary to acquire immediate possession of and title to the Property by eminent domain proceedings or otherwise.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2005

ADOPTED BY THE FOLLOWING VOTE:

AYES: AGENCY MEMBERS:
MAYOR:

NOES: AGENCY MEMBERS:

ABSTAIN: AGENCY MEMBERS:

ABSENT: AGENCY MEMBERS:

ATTEST: _____
Secretary of the Redevelopment Agency of the
City of Hayward

APPROVED AS TO FORM:

General Counsel

DRAFT

REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD

RESOLUTION NO. RA 05-

Introduced by Agency Member _____

mal
7/14/05

RESOLUTION AMENDING RESOLUTION NO. RA-05-12,
AS AMENDED, THE REDEVELOPMENT AGENCY
BUDGET RESOLUTION FOR FISCAL YEAR 2005-06,
RELATING TO AN APPROPRIATION OF FUNDS FROM
THE REDEVELOPMENT TAX ALLOCATION BOND FUND,
FUND 454 FOR THE PURPOSE OF ACQUIRING THE
LIBITZKY PROPERTY

BE IT RESOLVED by the Redevelopment Agency of the City of Hayward that
Resolution No. RA-05-12, as amended, the Redevelopment Agency Budget Resolution for
Fiscal Year 2005-06, is hereby further amended by appropriating \$351,000 from the
Redevelopment Tax Allocation Bond Fund, Fund 454, to Project No. 5099, Cannery Area
Public Improvements for the purpose of acquiring the Libitzky property.

HAYWARD, CALIFORNIA _____, 2005

ADOPTED BY THE FOLLOWING VOTE:

AYES: AGENCY MEMBERS:

NOES: AGENCY MEMBERS:

ABSTAIN: AGENCY MEMBERS:

ABSENT: AGENCY MEMBERS:

ATTEST: _____
Secretary of the Redevelopment Agency
of the City of Hayward

APPROVED AS TO FORM:

General Counsel